

Steven T. Wax, OSB #85012
Federal Public Defender
101 SW Main Street, Suite 1700
Portland, Oregon 97204
Tel: 503-326-2123
Fax: 503-326-5524
steve_wax@fd.org
Attorney for Petitioner

Patrick J. Ehlers, OSB #04118
Assistant Federal Public Defender
101 SW Main Street, Suite 1700
Portland, Oregon 97204
Tel: 503-326-2123
Fax: 503-326-5524
patrick_ehlers@fd.org
Attorney for Petitioner

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ADEL HASSAN HAMAD,

Petitioner,

v.

GEORGE W. BUSH, DONALD
RUMSFELD, JAY HOOD, and BRICE
GYURISKO,

Respondents.

CV 05-1009 JDB

EMERGENCY MOTION FOR
RECONSIDERATION OF TIMING ON
ORDER FOR PRODUCTION OF
FACTUAL RETURN AND FOR
IMMEDIATE PRODUCTION OF CSRT
AND ARB MATERIAL

(EXPEDITED CONSIDERATION
REQUESTED)

The petitioner, Adel Hassan Hamad, through his attorneys, Steven T. Wax and Patrick J. Ehlers, respectfully moves this Court to revisit the timing of production of the

factual return directed in the order of December 28, 2005 and order production of the non-classified portions of the return to counsel before the close of business on March 2, 2006, and filing of the full return with classified portions intact so that it would be available for review in the secure facility in Crystal City, Virginia, on March 3, 2006.

Circumstances have recently changed dramatically regarding the government's position on the disclosure of information pertaining to Guantánamo detainees. The government has acquiesced in the disclosure of Combatant Status Review Tribunal and Administrative Review Board proceedings to the press and public while still refusing to provide expedited access to that same information for the lawyers who are representing the detainees.

On November 30, 2005, Mr. Hamad moved this Court to order the government to disclose certain material so that his counsel could fulfill their obligations to Mr. Hamad and to the Court under the assignment order of October 5, 2005. By Order dated December 28, 2005, this Court directed the government to file a factual return to the habeas corpus petition by May 1, 2006. While holding in abeyance all other motions by notice filed February 3, 2006, the order of December 28, 2005, remains in effect.

During the week of February 13, 2006, the security clearance procedures for counsel for Mr. Hamad were concluded and they submitted all necessary documents to the Court Security Officers to obtain their clearances. Counsel immediately worked with counsel for the government to set up a visit with Mr. Hamad for March 4 and 5, 2006.

On February 23, 2006, counsel for Mr. Hamad learned that the government had

decided not to file an appeal in *Associated Press v. Department of Defense*, S.D.N.Y. Case No. 05-3941, in which Judge Rakoff ordered production of substantial portions of the non-classified portions of Combatant Status Review Tribunal and Administrative Review Board Proceedings for the overwhelming majority of persons detained in Guantanamo.

Counsel for Mr. Hamad immediately contacted counsel for the government and informally requested that it expedite production of the information for Mr. Hamad. Regrettably, the government response was that it is "not in a position to supply in the context of this litigation CSRT or ARB information for detainees beyond that already provided or that is required by the Court in your cases." Given the government's response, we urge the Court to order production of the return (or at the very least the same material that the government has agreed through its decision not to appeal that it will make available to the public) in time for Mr. Hamad's counsel to review it before they visit him on March 4 and 5, 2006. It is difficult to understand how the government can agree, or at least accede to, disclosure of CSRT and ARB information to the public yet not agree to make an effort to produce the same material in this litigation in time for meaningful use by counsel for Mr. Hamad. These events and actions by the government strongly militate in favor of advancing the return date previously set.

Respectfully submitted this 24th day of February, 2008.

/s/ Steven T. Wax
Steven T. Wax
Federal Public Defender

/s/ Patrick Ehlers
Patrick Ehlers
Assistant Federal Defender